

**NOV 30 2005**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

THOMAS HERMAN GOUGH, III,

Defendant - Appellee.

No. 04-50407

D.C. No. CR-03-01268-CAS

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Christina A. Snyder, District Judge, Presiding

Argued and Submitted November 16, 2005  
Pasadena, California

Before: BRIGHT<sup>\*\*</sup>, B. FLETCHER, and SILVERMAN, Circuit Judges.

Thomas Herman Gough III was indicted for four counts of criminal activity related to mail theft. He pled guilty to three of the counts. At sentencing, the

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The Honorable Myron H. Bright, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

district court imposed an 18-month sentence, which Gough has now served. The district court also imposed an alternative sentence of 51-months. The government appealed.

We find that the 18-month sentence imposed by the district was lawfully rendered under the precedent binding upon the sentencing judge at the time of the sentencing hearing. Moreover, we note that an 18-month sentence is lawful even following the Supreme Court's recent decision in *United States v. Booker*. See 125 S. Ct. 738, 757, 769 (2005) (Breyer, J.) (rendering the Sentencing Guidelines "effectively advisory"). We are aware of no authority to support the proposition that a district court may impose a conditional, alternative sentence that supplants a more lenient, lawful sentence. We therefore hold that the district court's decision to impose an 18-month sentence, now completely and duly served by Mr. Gough, is **AFFIRMED**.